

**RECIPROCAL COMPENSATION  
AND  
TRAFFIC EXCHANGE AGREEMENT**

**Dated as of \_\_\_\_\_, 2004**

**by and between**

**TDS METROCOM L.L.C.**

**and**

**McLeodUSA Telecommunications Services, Inc.**

**For**

**WISCONSIN**

## **RECIPROCAL COMPENSATION AND TRAFFIC EXCHANGE AGREEMENT**

THIS RECIPROCAL COMPENSATION AND TRAFFIC EXCHANGE AGREEMENT ("Agreement"), is made effective as of this \_\_\_\_ day of \_\_\_\_\_, 2004 (the "Effective Date") by and between TDS Metrocom L.L.C. with offices located at 525 Junction Road Suite 6000, Madison, Wisconsin, 53717 and McLeodUSA Telecommunications Services, Inc., with offices located at 6400 C Street, Cedar Rapids, Iowa (collectively the "Parties").

WHEREAS, the Parties desire to define the compensation system for handling wireline IntraLATA Toll, Local and ISP Traffic (as defined below) between their networks; and

WHEREAS, the Parties are entering into this Agreement to set forth the respective obligations of the Parties and the terms and conditions under which each Party will compensate the other for the transport and termination of wireline IntraLATA Toll, Local and ISP Traffic (as defined below) and additional services as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### **1. DEFINITIONS.**

Capitalized terms used in this Agreement shall have the meanings specified below in this Section and as defined elsewhere within this Agreement.

**1.1** "Act" means the Communications Act of 1934 (47 U.S.C. § 151 et seq.), as amended by the Telecommunications Act of 1996, and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Commission having authority to interpret the Act within its state of jurisdiction.

**1.2** "Alternate Billed Messages" shall mean messages originating on one Party's facilities that are billed by another company. Alternate Billed Messages include, without limitation, calls that are collect, third number billed, and billed to a LEC calling card.

**1.3** "Calling Party Number" ("CPN") is a Common Channel Interoffice Signaling ("CCIS") parameter that refers to the number transmitted through a network identifying the calling party.

**1.4** "Central Office Switch" means a switch used to provide Telecommunications Services, including, but not limited to:

(a) "End Office Switches" which are used to terminate Customer station loops for the purpose of interconnection to each other and to trunks; and

(b) "Tandem Offices Switches" or "Tandems" which are used to connect and switch trunk circuits between and among other Central Office Switches.

A Central Office Switch may also be employed as a combination End Office/Tandem Office Switch.

1.5 "Commission" means the Federal Communications Commission and/or applicable state public utility commission with jurisdiction over the territory, service, or subject matter governed under and including this Agreement.

1.6 "Common Channel Interoffice Signaling" ("CCIS") means the signaling system, developed for use between switching systems with stored-program control, in which all of the signaling information for one or more groups of trunks is transmitted over a dedicated high-speed data link rather than on a per-trunk basis and, unless otherwise agreed by the Parties, the CCIS used by the Parties shall be SS7.

1.7 "Custom Local Area Signaling Service Features" or "CLASS" means certain call-management service features that are currently available from the incumbent local exchange carrier and the Parties' networks. These could include: automatic call back; automatic recall; call trace; caller identification and related blocking features; calling number delivery; customer originated trace; distinctive ringing/call waiting; selective call forward; and selective call rejection.

1.8 "Customer" means a third-party residence or business or other carrier that subscribes to Telecommunications Services or uses the network provided by either of the Parties.

1.9 "Exchange Message Record" or "EMR" means the standard used for exchange of Telecommunications message information among Telecommunications providers for billable, non-billable, sample, settlement and study data. EMR format is contained in Bellcore Practice BR-010-200-010 CRIS Exchange Message Record.

1.10 "Exchange Access" is as defined in the Act.

1.11 "Exchange Area" means an area, defined by the Commission, for which a distinct local rate schedule is in effect.

1.12 "FCC" means the Federal Communications Commission.

1.13 "InterLATA" is as defined in the Act.

1.14 "IntraLATA" is as defined in the Act.

1.15 "Intellectual Property" means copyrights, patents, trademarks, trade secrets and all other intellectual property rights.

1.16 "IntraLATA Toll Traffic" means all IntraLATA calls other than Local Traffic calls.

- 1.17** "ISP Traffic" is traffic originated by an end user of one Party and delivered to the other Party for switching to an Internet Service Provider ("ISP").
- 1.18** "Local Access and Transport Area" ("LATA") is as defined in the Act.
- 1.19** "Local Exchange Carrier" ("LEC") is as defined in the Act.
- 1.20** "Local Traffic" means those calls that originate in one exchange and terminate in either the same exchange, or other calling area associated with the originating exchange as generally defined and specified in the general subscriber service tariff of the Regional Bell Operating Company or Incumbent Local Exchange Carrier, and as more particularly set forth in Schedule C, attached hereto and made a part hereof.
- 1.21** "Loss" or "Losses" means any and all losses, costs (including court costs), claims, damages (including fines, penalties, and criminal or civil judgments and settlements), injuries, liabilities and expenses (including attorneys' fees).
- 1.22** "North American Numbering Plan" ("NANP") means the numbering plan used in the United States that also serves Canada, Bermuda, Puerto Rico and certain Caribbean Islands. The NANP format is a 10-digit number that consists of a 3-digit NPA code (commonly referred to as the area code), followed by a 3-digit NXX code and 4-digit line or access number.
- 1.23** "NXX" means the 3-digit code which appears as the first 3 digits of a 7 digit telephone number.
- 1.24** "Point of Interface" or "POI" is a mutually agreed upon point of demarcation where the exchange of traffic between TDS Metrocom L.L.C. and McLeodUSA takes place.
- 1.25** "Reciprocal Compensation" is as described in this Agreement and in the Act.
- 1.26** "Signaling Transfer Point" ("STP") is as defined in the Act.
- 1.27** "Switched Exchange Access Service" means the offering of transmission or switching services (other than dedicated access services) to Telecommunications Carriers for the purpose of originating or terminating telephone toll service. Switched Exchange Access Services include: Feature Group A, Feature Group B, Feature Group D, 800/888/877 access and 900 access and their successor or similar Switched Exchange Access Services.
- 1.28** "Telecommunications" is as defined in the Act.
- 1.29** "Telecommunications Service" is as defined in the Act.
- 1.30** "Telecommunications Carrier" is as defined in the Act.
- 1.31** "Unbillable Messages" shall mean messages from which the end user customer account cannot be identified.

**1.32** "Uncollectible Messages" shall mean messages that are billed to a Customer account but revenues cannot be collected, including messages of which the end user denies knowledge.

## **2. INTERPRETATION AND CONSTRUCTION.**

All references to Sections and Schedules shall be deemed to be references to Sections of, and Schedules to, this Agreement unless the context shall otherwise require. In the event of a conflict or discrepancy between the provisions of this Agreement and the Act, the provisions of the Act (including rules and orders of the Commission) shall govern.

## **3. RECIPROCAL COMPENSATION**

### **3.1 Routing, Recording and MOU**

The traffic covered by this Agreement shall be routed as mutually agreed between the Parties as provided in this Agreement and shall be limited to wireline, wireless, IntraLATA Toll, Local and ISP Traffic between the Parties' networks.

**3.1.1.** Beginning on the Effective Date and throughout the Term of this Agreement, each of the Parties shall perform the traffic recording and identification functions necessary to provide the services contemplated hereunder, regardless of whether or not this Agreement results in a flow of compensation between the Parties. Each Party shall be primarily responsible for its own Local Number Portability ("LNP") queries under this Agreement. Each originating Party shall populate the jurisdictional indicator parameter ("JIP") in the SS7 message for each originating call. The terminating Party shall calculate terminating minutes of use ("MOU") based on standard automatic message accounting records made within such Party's network.

**3.1.2.** Each Party agrees to use commercially reasonable efforts to accurately capture and report the actual MOU associated with the IntraLATA Toll, Local and ISP Traffic it terminates for the other Party in order to properly calculate the necessary compensation under this Agreement.

### **3.2 Billing Of Minutes Of Use**

**3.2.1.** The measured terminating IntraLATA Toll, Local and ISP Traffic minutes will be chargeable MOU to the originating Party. Measured minutes or fractions thereof (the exact amount of the fraction being a function of the switch technology where the measurement is made) will be accumulated over standard 30-day billing periods, and then rounded up to the nearest traffic minute. Measurement of traffic minutes shall be on raw-minutes of use.

**3.2.2.** For billing purposes, each Party shall provide the originating end Customer's CPN information on each call carried over the appropriate Local/IntraLATA Trunks. Parties agree to provide CPN (calling party number, RN (redirecting number for forwarded calls, OCN (original called number (used if LRN is not available) and CPN (calling party number.

### **3.3 Applicability of Reciprocal Compensation**

**3.3.1** Each Party will transport and terminate the other Party's Local and ISP Traffic without charge. The parties may jointly agree to amend the agreement to provide for compensation at some future date.

### **3.4 Interconnection.**

**3.4.1.** Unless otherwise agreed herein, the Parties will use dedicated two-way trunks to terminate IntraLATA Toll, Local and ISP Traffic. McLeodUSA will control and be responsible for ordering the trunk groups. The Parties may commence negotiations to arrange for the direct trunked interconnection of their networks at any time during the Term of this Agreement. All meet point or direct interconnections will be mutually agreed upon prior to ordering and implementation. Parties agree to use standard access service request (ASR) when ordering or requesting network services or changes between each other. Each Party is responsible for providing its own facilities, including the cost of those facilities, up to the actual physical Point of Interface ("POI"). The POI is a mutually agreed upon point of demarcation where the exchange of traffic between TDS Metrocom L.L.C. and McLeodUSA takes place. The Parties will negotiate the facilities arrangement between their networks and the physical POI.

## **4. INTENTIONALLY DELETED**

## **5. GENERAL RESPONSIBILITIES OF THE PARTIES.**

**5.1** Upon request by the other Party, thirty (30) days after the Effective Date of this Agreement, and no more than once in each six month period thereafter, each shall provide the other Party with a rolling, six (6) calendar month, non-binding good faith forecast of its IntraLATA Toll, Local and ISP Traffic and volume requirements for the services provided under this Agreement in the form and in such detail as agreed by the Parties. The Parties agree that each forecast provided under this Sections shall be deemed "Proprietary Information" under this Agreement. The Parties shall also exchange non-proprietary technical descriptions in sufficient detail necessary to assure IntraLATA Toll, Local and ISP Traffic completion to and from all Customers in their respective designated service areas.

**5.2** Each Party is individually responsible to provide facilities within its network which are necessary for routing, transporting, and for delivering traffic to the other Party's network in an industry standard format, and to terminate the IntraLATA Toll, Local and ISP Traffic it receives in that standard format to the proper address on its network. The Parties are each solely responsible for participation in and compliance with national network plans, including The National Network Security Plan and The Emergency Preparedness Plan.

**5.2.1.** Each Party may use protective network traffic management controls such as 7-digit and 10-digit code gaps on traffic toward the other Party's network, when required to protect the public switched network from congestion due to facility failures, switch congestion or failure or

focused overload. Each Party shall immediately notify the other Party of any protective control action planned or executed.

**5.2.3.** The Parties shall cooperate and share pre-planning information regarding cross-network call-ins expected to generate large or focused temporary increases in call volumes, to prevent or mitigate the impact of these events on the public switched network.

**5.3** Each Party is solely responsible for the services it provides to its Customers and to other Telecommunications Carriers.

**5.4** The Parties shall work cooperatively to minimize fraud associated with third-number billed calls, calling card calls, and any other services related to this Agreement.

**5.5** Each Party is responsible for administering the NXX codes assigned to it.

**5.6** Each Party is responsible for obtaining Local Exchange Routing Guide listings of Common Carrier Language Location Identifier ("CLLI") codes assigned to its switches, and complying with LERG Rules and Guidelines.

**5.7** Each Party shall use the LERG published by Bellcore or its successor for obtaining routing information and shall provide all required information to Bellcore for maintaining the LERG in a timely manner.

**5.8** Each Party shall program and update its own Central Office Switches and End Office Switches and network systems to recognize and route traffic to and from the other Party's assigned NXX codes. Except as mutually agreed or as otherwise expressly defined in this Agreement, neither Party shall impose any fees or charges on the other Party for such activities.

**5.9** Each Party is responsible for obtaining transport facilities sufficient to handle traffic between its network and the other Party's network without excessive blocking of either originating or terminating traffic. For purposes of this paragraph a P.01 grade of service will be deemed sufficient. Each Party may provide the facilities itself, order them through a third party, or order them from the other Party.

**5.10** Each Party is responsible for requesting interconnection to the other Party's CCIS network where SS7 signaling on the trunk group(s) is desired. Each Party shall connect to a pair of access STPs in each LATA where traffic will be exchanged or shall arrange for signaling connectivity through a third party provider which is connected to the other Party's signaling network; provided, however, that the Parties may also employ direct SS7 connection between each other via B/D links. The Parties shall establish interconnection at the STP and other points as necessary and as jointly agreed to by the Parties.

**5.11** The Parties will cooperate in the exchange of TCAP messages to facilitate full interoperability of CCIS-based features between their respective networks, including all CLASS features and functions, to the extent each Party offers such features and functions to its own End Users and to the extent the Parties have access to such current CLASS features. All CCIS signaling parameters deployed by both Parties will be provided including CPN. All privacy indicators will be honored

## **6. TERM AND TERMINATION.**

**6.1 Term.** The initial term of this Agreement shall be two (2) years from the Effective Date of this Agreement ("Initial Term"). Upon expiration of the Initial Term, this Agreement shall automatically be renewed for additional one (1) year periods (each, a "Renewal Term") unless a Party delivers to the other Party written notice of termination of this Agreement at least one hundred and twenty (120) days prior to the expiration of the Initial Term or a Renewal Term. The Initial Term and all Renewal Terms, together, are sometimes referred to as the "Term".

**6.2 Termination for Default.** When a Party believes that the other Party is in violation of a material term or condition of this Agreement ("Defaulting Party"), it shall provide written notice to the Defaulting Party of such violation. If the material default condition is not remedied within the time period specified in the notice letter, which shall not be less than thirty (30) days after the Parties' appointment of designated representatives in accordance with the dispute resolution provisions of the Agreement or 60 days from the material breach itself, whichever is lesser, then the Party seeking relief may discontinue its performance without incurring any termination liability and/or terminate this Agreement, and pursue any other remedies available at law or in equity. A Party's failure to exercise any of its rights hereunder shall not constitute or be construed by the Defaulting Party as being a waiver of any past, present, or future right or remedy.

**6.3 Payment.** In the case of the expiration or termination of this Agreement for any reason, each of the Parties shall be entitled to payment for all services performed for services rendered up to the date of termination. In the event such termination is by a providing Party due to the other Party's breach, the breaching Party shall also be responsible for all actual third party expenses which have been unreimbursed, and that continue to be accrued or incurred after such expiration or termination.

## **7. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES.**

**NEITHER PARTY MAKES ANY WARRANTIES, REPRESENTATIONS OR AGREEMENTS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, OR ANY APPLICABLE TARIFF.**

## **8. INDEMNIFICATION.**

**8.1 General Provision.** Each Party (the "Indemnifying Party") shall defend and indemnify the other Party, its officers, directors, employees and permitted assignees (collectively, the "Indemnified Party"), and hold such Indemnified Party harmless against: any Loss arising from such Indemnifying Party's use of services offered under this Agreement, involving claims for



libel, slander, invasion of privacy, or infringement of Intellectual Property rights arising from the Indemnifying Party's own communications or the communications of such Indemnifying Party's Customers; and any Loss related to or arising out of (i) any act by the Indemnifying Party in violation of this Agreement, (ii) any misrepresentation or breach by the Indemnifying Party of any of representation and warranty contained in this Agreement, or (iii) the willful or grossly negligent supply by the Indemnifying Party of inaccurate data in conjunction with the provision of any service provided pursuant to this Agreement.

**8.2** Whenever a claim shall arise for indemnification under this Section, the Indemnified Party shall promptly notify the Indemnifying Party and request the Indemnifying Party to defend the same but failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability

**8.3** The Indemnifying Party shall have the right to defend against such liability or assertion and shall give, within ninety (90) days of its receipt of a request to defend same, written notice to the Indemnified Party of acceptance of the defense of such claim and the identity of counsel selected by the Indemnifying Party. Until such time as Indemnifying Party provides such notice, Indemnifying Party shall defer such claim, subject to any right to seek reimbursement for the costs of such defense in the event that it is determined that Indemnifying Party had no obligation to indemnify the Indemnified Party for such claim

**8.4** The Indemnifying Party shall have exclusive right to control and conduct the defense and settlement of any such claims subject to consultation with the Indemnified Party. The Indemnifying Party shall not be liable for any settlement by the Indemnified Party unless such Indemnifying Party has approved such settlement in advance and agrees to be bound by the agreement incorporating such settlement. The Indemnified Party shall be entitled to participate with the Indemnifying Party in such defense if the claim requests equitable relief or other relief that could affect the rights of the Indemnified Party and also shall be entitled to employ separate counsel for such defense at such Indemnified Party's expense. If the Indemnifying Party does not accept the defense of any indemnified claim as provided above, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnifying Party. Each Party agrees to cooperate and to cause its employees and agents to cooperate with the other Party in the defense of any such claim and the relevant records of each Party shall be available to the other Party with respect to any such defense, subject to the restrictions and limitations set forth in this Agreement.

## **9. LIMITATION OF LIABILITY.**

**9.1 Limitation of Damages.** Except for indemnity obligations as set forth in this Agreement, each Party's liability to the other Party for any Loss relating to or arising out of any negligent act or omission in its performance of this Agreement, whether in contract, tort, or otherwise shall be limited to the total amount that is or would have been charged to the other Party by such negligent or breaching Party for the service(s) or function(s) not performed or improperly performed.

**9.2 CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY WHATSOEVER TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF ANTICIPATED PROFITS OR REVENUE OR OTHER ECONOMIC LOSS IN CONNECTION WITH OR ARISING FROM ANYTHING SAID, OMITTED OR DONE HEREUNDER (COLLECTIVELY, "CONSEQUENTIAL DAMAGES"), EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; PROVIDED, THAT THE FOREGOING SHALL NOT LIMIT A PARTY'S OBLIGATION UNDER THIS AGREEMENT TO INDEMNIFY, DEFEND AND HOLD THE OTHER PARTY HARMLESS AGAINST ANY AMOUNTS PAYABLE TO A THIRD PARTY, INCLUDING ANY LOSSES, COSTS, FINES, PENALTIES, CRIMINAL OR CIVIL JUDGMENTS OR SETTLEMENTS, EXPENSES (INCLUDING ATTORNEYS' FEES) AND CONSEQUENTIAL DAMAGES OF SUCH THIRD PARTY.**

## **10. DISPUTE RESOLUTION.**

### **10.1 Finality of Disputes**

10.1.1 Except as otherwise specifically provided for in this Agreement, no claim may be brought for any dispute arising from this Agreement more than ninety (90) days from the date the occurrence which gives rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention.

10.1.2.1 Notwithstanding anything contained in this Agreement to the contrary, a Party shall be entitled to dispute only those charges for which the Bill Due Date occurred within the ninety (90) days immediately preceding the date on which the other Party received notice of such Disputed Amounts.

**10.2 Commencing Dispute Resolution.** Dispute Resolution shall commence upon one Party's receipt of written notice of a controversy or Claim arising out of or relating to this Agreement or its breach. No Party may pursue any Claim unless such written notice has first been given to the other Party.

**10.3 Billing Dispute Resolution Process.** The following Dispute Resolution procedures will apply with respect to any billing dispute arising out of or relating to the Agreement.

10.3.1 If the written notice given pursuant to Section 10.2 discloses that a dispute relates to billing, then the following procedures shall be used. In order to resolve a billing dispute, the disputing Party shall furnish the other Party written notice of (i) the date of the bill in question, (ii) BAN and Invoice number of the bill in question, (iii) amount billed, (iv) amount in question and (v) the reason that the disputing party disputes the billed amount. Either Party is not prohibited from supplementing the basis for its billing dispute at any time during the process.

10.3.2 The Parties shall attempt to resolve Disputed Amounts appearing on the other Party's current billing statements thirty (30) to forty-five (45) calendar days from the Bill Due Date. If not resolved within thirty (30) calendar days, upon request, the non-disputing Party will notify the disputing Party of the status of the dispute and the expected resolution date.

10.3.3 The Parties shall attempt to resolve Disputed Amounts appearing on statements prior to the current billing statement within thirty (30) to sixty (60) calendar days. If not resolved within thirty (30) calendar days from the date notice of the Disputed Amounts was received, the non-disputing Party will notify the disputing Party of the status of the dispute and the expected resolution date.

10.3.4 If the Disputing Party is not satisfied by the resolution of the billing dispute under this Section 10.3, the Disputing Party may notify the other Party in writing that it wishes to invoke the Informal Resolution of Disputes afforded pursuant to Section 10.4 of this Agreement.

#### **10.4 Informal Resolution of Disputes.**

10.4.1 Upon receipt by one Party of notice of a dispute by the other Party pursuant to Section 10.2 or Section 10.3.4 each Party will appoint a knowledgeable, responsible representative that will have authority to finally resolve the dispute to meet and negotiate in good faith to resolve any dispute arising under this Agreement. Designation of representatives must be provided in writing to the other Party within five (5) calendar days of receipt of notice of a dispute. The location, form, frequency, duration, and conclusion of these discussions will be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative Dispute Resolution procedures such as mediation to assist in the negotiations. During the informal dispute resolution process, reasonable requests for information related to the dispute should be provided to the requesting Party within seven (7) calendar days of issuance of the request subject to any appropriate objections. Within five (5) business days of the initiation of the informal Dispute Resolution, the Party initiating the informal dispute shall present a written statement summarizing its position as to the dispute. Within five (5) business days of receipt, the other Party shall respond with a written statement summarizing its position as to the dispute. Discussions and the correspondence among the representatives for purposes of settlement are exempt from discovery and production and will not be admissible in the arbitration described below or in any lawsuit or agency action without the concurrence of both Parties. Documents identified in or provided with such communications that were not prepared for purposes of the negotiations and which may have been provided in response to a reasonable request for information during the course of Dispute Resolution are not so exempted, and, if otherwise admissible, may be admitted in evidence in the arbitration or lawsuit unless both Parties agree otherwise.

10.4.2 The Informal Dispute Resolution process shall conclude not more than fifteen (15) business days after service of a Party's written notice of controversy or claim provided pursuant to Section 10.4.1 unless the Parties mutually agree to extend this deadline for concluding the Informal Dispute Resolution process. Upon conclusion of the informal Dispute Resolution process, either Party may in its sole discretion invoke either the formal Dispute

Resolution set forth in Section 10.5 or the informal or formal complaint procedures of the appropriate state or federal regulatory agency.

#### **10.5 Formal Dispute Resolution.**

10.5.1 If the Parties are unable to resolve the dispute through the informal procedure described in Section 10.4, then either Party may invoke the formal Dispute Resolution procedures described in Section 10.5, including arbitration or other procedures as appropriate. Formal Dispute Resolution shall conclude not more than twenty (20) business days after either Party invokes the formal Dispute Resolution process unless the Parties mutually agree to extend the deadline for concluding formal Dispute Resolution.

10.5.2 **Claims Not Subject to Arbitration.** If the following claims are not resolved through informal Dispute Resolution, they will not be subject to arbitration and must be resolved through any remedy available to a Party pursuant to law, equity or agency mechanism.

10.5.2.1 Actions seeking a temporary restraining order or an injunction related to the purposes of this Agreement.

10.5.2.2 Actions to compel compliance with the Dispute Resolution process.

10.5.2.3 All claims arising under federal or state statute(s), including antitrust claims.

#### **10.6 Arbitration.**

10.6.1 Disputes subject to mandatory arbitration under the provisions of this Agreement will be submitted to a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association or pursuant to such other provider of arbitration services or rules as the Parties may agree. The arbitrator shall be knowledgeable of telecommunications issues. Arbitration will be held in the city where the Commission is located or at a location that is agreeable to both Parties. The arbitration hearing will be requested to commence within forty-five (45) calendar days of the demand for arbitration. The arbitrator will control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs upon a schedule determined by the arbitrator. The Parties will request that the arbitrator rule on the dispute by issuing a written opinion within thirty (30) calendar days after the close of hearings. The Federal Arbitration Act, 9 U.S.C. Secs. 1-16, not state law, shall govern the arbitrability of all disputes. The arbitrator will have no authority to award punitive damages, exemplary damages, Consequential Damages, multiple damages, or any other damages not measured by the prevailing Party's actual damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of this Agreement. The times specified in this Section may be extended or shortened upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Each Party will bear its own costs of these procedures, including attorneys' fees. The Parties will equally split the fees of the arbitration and the arbitrator. The arbitrator's award shall be final and binding and shall be in writing. Judgment upon the award rendered by an arbitrator may be entered in any court having jurisdiction thereof.

10.6.2 The Parties and the arbitrator will treat the arbitration proceeding, including the hearings and conferences, discovery and other related events, as confidential, except as necessary.

## 11. INTENTIONALLY DELETED

## 12. MISCELLANEOUS.

**12.1 Compliance.** Each Party shall comply with all applicable federal, state, and local laws, rules, and regulations applicable to its performance under this Agreement.

**12.2 Independent Contractor.** No partnership, joint venture, fiduciary, employment or agency relationship is established by entering into this Agreement. Each Party shall perform services hereunder as an independent contractor and nothing herein shall be construed as creating any other relationship between the Parties

**12.3 Force Majeure.** Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers (individually or collectively, a "Force Majeure").

**12.4 Confidentiality.** Any information such as specifications, drawings, sketches, business information, forecasts, models, samples, data (including without limitation call detail data), computer programs and other software and documentation of one Party (a "Disclosing Party") that is furnished or made available or otherwise disclosed to the other Party or any of such other Party's employees, contractors, agents or affiliates ("Receiving Party") pursuant to this Agreement ("Proprietary Information") shall be deemed the property of the Disclosing Party. Proprietary Information, if written, shall be marked "Confidential" or "Proprietary" or by other similar notice, and, if oral or visual, shall be confirmed in writing as confidential by the Disclosing Party to the Receiving Party within ten (10) days after disclosure. Unless Proprietary Information was previously known by the Receiving Party free of any obligation to keep it confidential, or has been or is subsequently made public by an act not attributable to the Receiving Party, or is explicitly agreed in writing not to be regarded as confidential, it (a) shall be held in confidence by each Receiving Party; (b) shall be disclosed to only those representatives who have a need for it in connection with the provision of services required to fulfill this Agreement and shall be used only for such purposes; and (c) may be used for other purposes only upon such terms and conditions as may be mutually agreed to in advance of use in writing by the Parties. Notwithstanding the foregoing sentence, a Receiving Party shall be entitled to disclose or provide Proprietary Information as required by any governmental authority or applicable law only in accordance with this Agreement.

**12.5** If any Receiving Party is required by any governmental authority or by applicable law to disclose any Proprietary Information, then such Receiving Party shall provide the Disclosing Party with written notice of such requirement as soon as possible and prior to such disclosure. The Disclosing Party may then either seek appropriate protective relief from all or part of such requirement. The Receiving Party shall use commercially reasonable efforts to cooperate with the Disclosing Party in attempting to obtain any protective relief which such Disclosing Party chooses to obtain.

**12.6** In the event of the expiration or termination of this Agreement for any reason whatsoever, each Party shall return to the other Party or certify as destroy all Proprietary Information obtained from the other Party.

**12.7 Governing Law.** This Agreement shall be governed by the laws of the State of New York without reference to its conflict of law provisions.

**12.8 Transfer and Assignment.** Neither Party may assign or transfer this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed.

**12.9 Non-Waiver.** No release, discharge or waiver of any provision hereof shall be enforceable against or binding upon either Party unless in writing and executed by the other Party as the case may be. Neither the failure of either Party to insist upon a strict performance of any of this Agreement, nor the acceptance of any payments from either Party with knowledge of a breach of this Agreement by the other Party in the performance of its obligations hereunder, shall be deemed a waiver of any rights or remedies.

**12.10 Notices.** Notices given by one Party to the other Party under this Agreement shall be in writing and shall be (a) delivered personally, (b) delivered by express delivery service, or (c) mailed, certified mail or first class U.S. mail postage prepaid, return receipt requested to the following addresses of the Parties:

TDS Metrocom L.L.C.	McLeodUSA Telecommunications Services, Inc.
Manager Carrier Relations TDS Metrocom L.L.C. 525 Junction Road Suite 6000 Madison, Wisconsin 53717	General Counsel 6400 C Street, SW, PO Box 3177 Cedar Rapids, IA 52406
And	And
External Relations Manager TDS Metrocom L.L.C. 525 Junction Road suite 6000 Madison, Wisconsin 53717	Group Vice President - Materials Management McLeodUSA 15th East 5th St, Suite 1800 Tulsa, OK 74103

Or to such other address as either Party shall designate by proper notice. Notices will be deemed given as of the earlier of (i) the date of actual receipt, (ii) the next business day when notice is sent via express mail or personal delivery, or (iii) three (3) days after mailing in the case of first class or certified U.S. mail.

**12.10.1** For operational issues, repair matters or other network assistance, the Parties agree to establish a designated contact and escalation process to resolve network or client issues. Such contact and escalation list is contained in Schedule E.

**12.11 Publicity and Use of Trademarks or Service Marks.** Neither Party nor its subcontractors or agents shall use the other Party's trademarks, service marks, logos or other proprietary trade dress in any advertising, press releases, publicity matters or other promotional materials without such Party's prior written consent.

**12.12 No License.** No license under patents, copyrights or any other intellectual property right (other than the limited license to use consistent with the terms, conditions and restrictions of this Agreement) is granted by either Party or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement.

**12.13 Survival.** The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

**12.14 Scope of Agreement.** This Agreement is intended to describe and enable specific interconnection and Reciprocal Compensation arrangements for the direct exchange of traffic as mutually agreed between the Parties. This Agreement does not obligate either Party to provide arrangements not specifically provided herein, nor does it limit any obligation either Party may have under applicable law to provide other arrangements.

**12.15 Entire Agreement.** The terms contained in this Agreement and any Schedules, Exhibits, tariffs and other documents or instruments referred to herein, which are incorporated into this Agreement by this reference, constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written. Neither Party shall be bound by any preprinted terms additional to or different from those in this Agreement that may appear subsequently in the other Party's form documents, purchase orders, quotations, acknowledgments, invoices or other communications. This Agreement may only be modified by a writing signed by an officer of each Party.

**12.16 Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first written above.

TDS Metrocom L.L.C.

By: 

Nicholas Jackson

Vice President Business Operations

Dated: 10/13/04

McLeodUSA Telecommunications Services,  
Inc.,

By: 

James E. Thompson

GVP, General Counsel and Secretary

Dated: 9/22/04



**SCHEDULE E**  
**CONTACT AND ESCALATION LIST**

**TDS Metrocom L.L.C.**

McLeodUSA

To Place Orders, trunk group service requests or request information about trunks or facilities:

Network Operations  
Circuit Provisioning  
Telephone: 608-663-0910  
Fax: 608-663-3141  
Address: 525 Junction Rd Suite 6000,  
Madison, WI 53717-2105  
E-mail:  
dlmetrocomprovisioning@tdsmetro.com

Name: Roxanne Hoover  
Telephone: 319-790-7100  
Fax: 319-790-7127  
Address: PO Box 3177, Cedar Rapids, IA  
52410-3177  
E-mail: Roxanne.hoover@mcleodusa.com

For Escalation: Manager  
Name: Elden Heittola  
Telephone: 608-663-3111  
E-mail: Elden.Heittola@tdsmetro.com

For Escalation: Manager  
Name: Darren Green  
Telephone: 918-419-3327  
E-mail: Darren.green@mcleodusa.com

To test and turn up facilities or trunks or to coordinate call through testing:

Madison WI. Central Office  
Ph: 608-663-3106

Name: Install  
Telephone: 800-850-5643  
Fax: 918-419-3586  
Address: 15 E 5<sup>th</sup> St., Suite 1700, Tulsa,  
OK 74103

New Berlin WI. Central Office  
Ph: 262-754-3106

Appleton WI. Central Office  
Ph: 920-882-3106

For Escalation: Manager  
Name Shelley Stufflebeam  
Telephone: 918-419-3618  
E-mail:  
shelley.stufflebeam@mcleodusa.com

Vernon Hills IL. Central Office  
Ph: 847-996-3106

Grand Rapids MI. Central Office  
Ph: 616-301-3106

Lansing MI. Central Office  
Ph: 517-853-3106

Ann Arbor MI Central Office  
Ph: 734-927-3106

To report trouble with facilities or trunks:

NOC Contact Number: 800-790-1216  
Facsimile Number: 608-664-4225  
E-mail:  
telecom.network.management@tdstelecom.com

Name: Network Management Center  
(24x7)  
Telephone: 800-332-2385  
Fax: 319-790-6699  
Address: PO Box 3177, Cedar Rapids, IA  
52410-3177

For Escalation: Manager  
Name: Bill Graesser  
Telephone: 319-790-6087  
E-mail: william.graesser@mcleodusa.com

